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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,238	03/26/2004	Anthony Louis Moffa	04-40126-US	8999
26345	7590	07/01/2008		
GIBBONS P.C. ONE GATEWAY CENTER NEWARK, NJ 07102			EXAMINER MAYO, TARA L	
			ART UNIT	PAPER NUMBER
			3671	
			NOTIFICATION DATE	DELIVERY MODE
			07/01/2008	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

thibbits@gibbonslaw.com  
abriggs@gibbonslaw.com  
IPDocket@gibbonslaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/811,238	<b>Applicant(s)</b> MOFFA ET AL.	
	<b>Examiner</b> TARA L. MAYO	<b>Art Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 April 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 15 April 2008 has been entered.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 6, 9, 11, 12, 13, 14 and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Fernie et al. (U.S. Patent No. 6,938,285 B2).

Fernie et al. '285, as best seen in Figure 6, show a stretcher supporter comprising:  
with regard to claim 1,  
an open frame (28):  
a stretcher attachment element (20) that securely attaches a stretcher (18) to said open frame;

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an adjustable lifting point (combination of elements 24 and 26); and

a shiftable, rotatable column (34);

with regard to claim 2,

wherein said adjustable lifting point comprises a plunger mechanism (the combination of elements 34d);

with regard to claim 6,

wherein said open frame comprises at least two attachment points;

with regard to claim 9,

wherein said open frame is composed of metal (as admitted by cross section in Figure 2, see MPEP 608.02);

with regard to claim 11,

wherein said adjustable lifting point is adjusted by an electrical motor (inherent to use of controls);

with regard to claim 12,

wherein said adjustable lifting point is controlled by a computing device (36).

With regard to claims 13, 14 and 18, the method steps recited therein are inherent to the assembly and use of the device disclosed by Fernie et al. '285.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1, 6, 7, 8, 13, 18, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turpin (U.S. Patent No. 3,351,959) in view of Fernie et al. (U.S. Patent No. 6,938,285 B2).

Turpin '959, as best seen in Figure 1, shows a stretcher supporter comprising:  
with regard to claim 1,

an open frame (the combination of elements 11 and 12);

a stretcher attachment element (17) that securely attaches a patient support to said open frame;

an adjustable lifting point (the intersection of elements 11 and 12) connected to and suspending said open frame; and

a shiftable, rotatable column (12); and

with regard to claims 6 and 7,

wherein said open frame comprises two attachment points in the form of hooks (15).

Turpin '959 fails to teach a stretcher.

Fernie et al. '285 show a patient transfer device comprising a flexible stretcher (18).

With regard to claim 1, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device disclosed by Turpin '959 such that it would further include a stretcher as taught by Fernie et al. '285. The motivation would have been to provide means for supporting a patient on the lift device in a supine position.

With regard to claim 8, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device taught by the combination of Turpin '959 and Fernie et al. '285 such that the open frame would comprise two hemispherical arms since it has been held that the particular configuration of a claimed device is an obvious modification absent evidence of significance. *In re Dailey*, 357 F.2d 669, 149 USPQ 47 (CCPA 1966).

With regard to claims 13, 18, 19 and 20, the structural limitations of the claimed method are taught by the combination of Turpin '959 and Fernie et al. '285 as modified above.

7. Claims 3, 4, 5, 10, 15, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fernie et al. (U.S. Patent No. 6,938,285 B2).

With regard to claim 3, Fernie et al. '285, as seen in Figure 1, show the plunger mechanism comprising a plurality of holes arranged in series along element 34a, and further teach elements 34a and 34d being adjustably engaged (col. 6, lines 19 through 21). The prior art fails, however, to expound upon the means of adjusting the two elements. Therefore, it would

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have been obvious to one having ordinary skill in the art at the time of invention to modify the device disclosed by Fernie et al. '285 such that it would further include a spring loaded pin positionable within anyone of the plurality of holes, since the Examiner takes Official Notice of the use of spring loaded pins in combination with a series of holes for securing the position of one element relative to another, wherein the one element is slidable relative to the other element. With regard to claim 5, Applicant's recitation of a constricting pressure mechanism is met by the spring loaded pin as addressed in the rejection of claim 3.

With regard to claim 4, it would have been obvious to one having ordinary skill in the art at the time of invention to space the holes of the device shown by Fernie et al. '285 about one inch apart since Applicant has not shown that the particular spacing recited in the claim is critical or provides an unexpected result. As such, the limitation is met by the device shown by Fernie et al. '285 which is capable of being manufactured to the claimed dimensions.

Fernie et al. '285 show the open frame comprising chains (38e). With regard to claim 10, it would have been obvious to one having ordinary skill in the art at the time of invention to modify the device taught by Fernie et al. '285 such that it would include cables instead of chains since the Examiner takes Official Notice of the functional equivalence of chains and cables for entraining mechanical members.

With regard to claims 15, 16 and 17, the structural limitations of the claimed method are taught by Fernie et al. '285 as modified above.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to TARA L. MAYO whose telephone number is (571)272-6992.

The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 571-272-6998. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/TARA L MAYO/  
Primary Examiner, Art Unit 3671

tlm  
22 June 2008



<b>Application Number</b> 	<b>Application/Control No.</b>	<b>Applicant(s)/Patent under Reexamination</b>	
	10/811,238	MOFFA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	TARA L. MAYO	3671	